

IN THE FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

ENDORSED
First Judicial District Court

JUL 15 2011

Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2268
Santa Fe, NM 87504-2268

EASTERN NAVAJO DINÉ AGAINST URANIUM MINING
its individual members, LARRY KING, and CHRISTINE SMITH

Plaintiffs,

v.

D101C0201102270
Case No.

DAVID MARTIN
SECRETARY OF THE ENVIRONMENT, RAJ SOLOMON
DEPUTY SECRETARY OF THE ENVIRONMENT and
the NEW MEXICO ENVIRONMENT DEPARTMENT

Defendants.

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY
INJUNCTION**

Plaintiffs Eastern Navajo Diné Against Uranium Mining ("ENDAUM"), its individual members, and representative members Larry J. King, and Christine Smith ("Plaintiffs") respectfully submit the following memorandum of law in support of their Motion for Preliminary Injunction enjoining the New Mexico Environment Department ("NMED") from allowing Hydro Resources, Inc. ("HRI") from conducting any discharges on the southeast ¼ section of Section 8, Township 16 N, Range 16 W ("Section 8"), in the community of Church Rock, New Mexico, prior to making a determination to grant a new discharge permit application from HRI.

I. BACKGROUND

A. Crownpoint Uranium Project

The Crownpoint Uranium Project ("Project") is a uranium mining project proposed by HRI for four sites in the villages of Church Rock and Crownpoint in the Eastern Navajo Agency

in northwestern New Mexico. The Project will use *in situ* leach (“ISL”)¹ uranium extraction technology. Hydro Resources, Inc., DP-558 Supplemental Materials, Vol. at 5-6 (“Application”). A copy of those pages is attached as Exhibit 1. ISL involves injecting chemicals into a series of wells in an aquifer that contains uranium ore bodies. *Id.* Under natural conditions, uranium in an aquifer is immobile because the uranium is chemically bonded to surrounding grains of sand. *See, e.g., In the Matter of Hydro Resources, Inc.*, LBP-05-17, 62 NRC 77, 82 (2005), attached to HRI’s Application, Vol. 1, Appendix 3. Thus, radioactive and heavy metal contamination associated with uranium ore bodies in their undisturbed condition is restricted to the small areas of the deposits, usually a few hundred feet long and tens of feet wide.

When ISL chemicals are injected into a uranium bearing aquifer, the uranium reacts with these chemicals and is mobilized throughout much larger portions of the aquifer. Nuclear Regulatory Commission, NUREG 1508, Final Environmental Impact Statement to Construct and Operation the Crownpoint Uranium Solution Mining Project, Crownpoint, New Mexico at 2-9. (1997) (“FEIS”), attached as Exhibit 2. Once the uranium is mobilized in the aquifer, the uranium saturated water is withdrawn through another series of wells and processed to make fuel for nuclear power plants. *Id.* After operations are complete, the operator is required to restore the mined aquifer to pre-mining conditions. FEIS at 2-19, attached as Exhibit 3. In the history of ISL mining in the United States, no commercial scale project has ever been able to restore groundwater to its pre-mining condition. Nuclear Regulatory Commission, NUREG 1910, Supp. 1, Environmental Impact Statement for the Moore Ranch ISR Project in Campbell County Wyoming at B-36 (Aug. 2010), attached as Exhibit 4.

HRI intends to begin the Project at Section 8. Section 8 is located immediately to the west of New Mexico highway 466 and adjacent to and across the highway from ENDAUM

¹ The Application refers to *in situ* leach mining as *in situ* recovery. The two terms are interchangeable.

member Larry King's residence. *See*, Affidavit of Larry J. King at ¶¶ 4-10, attached as Exhibit 5. In addition to the uranium extraction process at Section 8, HRI intends to process the uranium saturated water at a satellite processing plant on Section 8 and further process the uranium at its central processing plant in Crownpoint. FEIS at 2-12, attached as Exhibit 6. The central processing plant is located directly behind the residence of ENDAUM member Christine Smith. Affidavit of Christine Smith at ¶¶ 4-5, attached as Exhibit 7.

B. DP-558 Background

1. Statutory and Regulatory Framework.

The Water Quality Act ("Act") and its implementing regulations is the legal framework that governs pollution discharges into ground and surface water. The purpose of the Water Quality Act is to prevent, abate, and control water pollution. NMSA 1978, § 74-6-13. The Act provides that the Water Quality Control Commission is responsible for adopting regulations to prevent and abate water pollution. *Id.*, § 74-6-4(D), (E). Constituent agencies, such as the NMED, are required to administer the regulations promulgated by the Water Quality Control Commission. *Id.*, § 74-6-8.

NMED is responsible for administering the regulations governing discharges into surface and groundwater. §§ 20.6.2.1201, 3101, 3104 NMAC. The purpose of the regulations governing discharges is to "protect all ground water of the state of New Mexico which has an existing concentration of 10,000 mg/l or less TDS, for present and potential future use as domestic and agricultural water supply." § 20.6.2.3101.A NMAC. The regulations' purpose is realized, in part, by requiring a permit for every discharge that may affect groundwater with 10,000 milligrams per liter ("mg/l") or less total dissolved solids ("TDS"). § 20.6.2.3104 NMAC. The

NMED may issue a discharge permit for a particular project after making certain specific findings and holding public hearings on the permit application. § 20.6.2.3106.C NMAC.

A discharge permit is issued for a period of not more than five years, except that for new discharges, the permit period begins when the discharge commences. § 20.6.2.3109.H.4 NMAC. In “no event”, however, may a discharge permit term be longer than seven years from the date of issuance. *Id.* Discharge permit renewal is timely if the permit holder submits a renewal application within 120 days of its permit expiring. § 20.6.2.3106.F NMAC.

2. History of DP-558.

On April 1, 2001, Hydro Resources, Inc., submitted an application to Defendant the New Mexico Environment Department Groundwater Bureau purporting to seek renewal of its discharge permit number DP-558 (“DP-558”). In its application to renew DP-558, HRI asserted that its renewal application was timely apparently because it had been previously timely renewed and that intervening litigation made jurisdiction over Section 8 unclear. Exhibit 1, Application at 5. Defendant NMED notified the public that it received HRI’s application on May 13, 2011.

According to NMED records, DP-558 was originally approved by NMED’s predecessor agency, the Environmental Improvement Division, on November 2, 1989, and last renewed by NMED in 1996. Exhibit 1, Application at 5. If valid, DP-558 would allow HRI to conduct ISL uranium mining at Section 8.

By letter dated March 23, 2011, Groundwater Bureau Chief, William Olson, erroneously notified HRI that its renewal application was timely “within the meaning of 20.6.2.3016.F NMAC”. A copy of that letter is attached hereto as Exhibit 8. However, Mr. Olson also properly instructed HRI that NMED must approve HRI’s DP-558 permit application before HRI could begin mining at Section 8. *Id.*

On April 6, 2011, Mr. Olson received an email from HRI's representative complaining that HRI should be able to begin mining at Section 8 with its current discharge permit. A copy of that email is attached as Exhibit 9. Specifically, HRI's representative alleged that NMED's position that HRI could not begin mining until NMED had approved its permit application was contrary to § 20.6.2.3106.F NMAC.

On May 26, 2011, while Mr. Olson was on vacation, Deputy Environment Secretary Raj Solomon summoned George Shuman, a member of the Groundwater Bureau's staff, to his office. During this meeting, Mr. Solomon instructed Mr. Shuman to re-issue Mr. Olson's March 23 letter without the "problematic sentence" prohibiting HRI from conducting discharging activities at Section 8 until NMED approves HRI's discharge permit application. HRI and Defendants viewed this sentence as "problematic" because the restriction on HRI being able to mine prior to receiving approval of its permit application was "hindering Hydro Resource's ability to obtain financing for the mine development project". Mr. Shuman re-issued the letter on May 27, 2011. A copy of that letter is attached as Exhibit 10. Mr. Shuman summarized his meeting with Mr. Solomon in an email to Mr. Olson. A copy of that email is attached as Exhibit 11. Furthermore, Mr. Shuman provided emails to Mr. Olson demonstrating that Mr. Solomon had reviewed and approved the May 27 letter. A copy of that email is attached as Exhibit 12. This sequence of events apparently took place without Mr. Olson's knowledge or consent. See, Mr. Olson's memo to file, attached as Exhibit 13.

II. ARGUMENT

The function of a preliminary injunction is to preserve the status quo pending a final determination of the rights of the parties. *Insure New Mexico, LLC v. McGonigle*, 128 N.M. 611, 614, 995 P.2d 1053, 1056 (Ct. App. 2000). Whether to grant a preliminary injunction is a

matter that is committed to the discretion of the trial court. *National Trust for Historic Pres. v. City of Albuquerque*, 117 N.M. 590, 595, 874P.2d 798, 803 (Ct. App. 1994). The test for granting a preliminary injunction includes four elements:

- (1) the plaintiff will suffer irreparable injury unless the injunction is granted;
- (2) the threatened injury outweighs any damage the injunction might cause the defendant;
- (3) issuance of the injunction will not be adverse to the public's interest; and
- (4) there is a substantial likelihood plaintiff will prevail on the merits.

Labalbo v. Hymes, 115 N.M. 314, 318, 850 P.2d 1017, 1021 (Ct. App. 1993); *see also* Rule 1-066 NMRA (2011). In the present matter, each of these elements supports the issuance of a preliminary injunction.

A. There is a Substantial Likelihood that Plaintiffs will Prevail on the Merits.

Given the plain language of the regulations governing discharge permit application renewals, there is a substantial likelihood that ENDAUM will prevail on the merits. According to the Water Quality Act regulations, NMED may issue a discharge permit renewal for the term of five years after the discharge has begun - in the case of new discharges - but in “no event” may issue a discharge permit for longer than seven years. § 20.6.2.3109.H.4 NMAC.

In this case, HRI initially received DP-558 on November 2, 1989. HRI timely filed for a renewal in 1996 and its renewal application was approved on August 16, 1996. Exhibit 1, p. 5. However, neither HRI’s discharge permit application nor NMED’s records contain any indication that HRI applied for or received renewals in 2003 or 2010. Indeed, the NMED produced a timeline indicating that HRI had failed to respond in 2002 to a notice that DP-558 was about to expire and failed to renew its discharge permit at that time. A copy of that timeline is attached as Exhibit 14.

Since HRI did not apply for renewal of DP-558 in 2003 or 2010 as required by § 20.6.2.3109.H.4 NMAC, DP-558 expired in 2003. Because the factual record does not support NMED's conclusion that DP-558 has been timely renewed, NMED had no basis or authority to accept HRI's application as a renewal application.

Likewise, because HRI failed to renew DP-558 in 2003 or 2010, Defendants had no authority to determine that HRI could inform investors that it could begin mining operations prior to NMED making a decision to grant or deny HRI's discharge permit application. NMED regulations specifically prohibit any discharges without a valid and enforceable discharge permit. § 20.6.2.3104 NMAC. HRI's discharge permit, DP-558, expired in 2003 and was not renewed. Therefore, HRI does not have a valid or enforceable discharge permit and Defendants have no authority to grant one without first adhering to the proper public process required by NMED's regulations. Moreover, the Defendants not only acted beyond their authority under the regulations, but their actions also subvert the regulatory process and the purposes of the Water Quality Act.

B. Plaintiffs will Suffer Irreparable Injury Unless the Injunction is Granted.

In this case, Plaintiffs will suffer two distinct kinds of harm. First, Plaintiffs will suffer actual harm from HRI's operations. Second, Plaintiffs will suffer procedural harm if Defendants continue to proceed without following the mandates of its regulatory process for evaluating discharge permits.

1. Plaintiffs will Suffer Actual Harm.

As described in more detail below, the Plaintiffs will suffer a range of actual harms including noise, dust and radioactive effects. Federal courts², including the Supreme Court have

held that environmental injury, like the injuries the Plaintiffs will suffer, is generally irreparable and favors issuing an injunction. As the United States Supreme Court held, "environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable. If such injury is sufficiently likely, therefore, the balance of harms will usually favor the issuance of an injunction to protect the environment." *Amoco Prod. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987). *See also, Catron County v. U.S. Fish & Wildlife Serv.*, 75 F.3d 1429, 1440 (10th Cir. 1996) (stating that "environmental injury usually is of an enduring or permanent nature, seldom remedied by money damages and generally considered irreparable"); *Davis v. Mineta*, 302 F.3d 1104, 1115 (10th Cir. 2002) (same) (quoting *Amoco Prod. Co.*, 480 U.S. at 545); *see also, Wilcox v. Timberon Protective Ass'n*, 111 N.M. 478, 486; 806 P.2d 1068, 1076 (Ct. App. 1990) (damages due to loss of quiet enjoyment are incalculable, therefore legal remedies are inadequate).

In this case, the Plaintiffs will suffer irreparable harm due to harm to the environment from HRI's operations. As ENDAUM member Larry King describes in his attached affidavit, he lives directly adjacent to the Section 8 mine site. Exhibit 5, ¶¶ 6, 10. Because of his close proximity to the Section 8 site, Mr. King will be exposed to dust, some of which may contain radioactive material, from construction and traffic at the site and noise from construction and traffic. *Id.* ¶¶ 12, 15. Mr. King will be in close proximity to well-field radon venting and radioactive liquid waste disposal on Section 8. *Id.*, ¶ 13. Finally, because Mr. King gathers medicinal and ceremonial plants from near Section 8, the uranium mine will interfere with his cultural practices. *Id.*, ¶¶ 8,9,11.

² While no court in New Mexico has specifically considered whether environmental injuries are irreparable, there is ample precedent from Federal courts, which New Mexico courts look to for guidance. *See, LaBalbo v. Hymes*, 115 N.M. at 317-318, 850 P.2d at 1020-1021 ("In the absence of New Mexico authority concerning the factors a trial court must consider in ruling on a motion for a preliminary injunction, we turn to federal cases interpreting Federal Rule of Civil Procedure 65, which is similar to SCRA 1986, 1-066.").

Further, ENDAUM member Christine Smith lives within 250 feet of the HRI central processing plant fence line in Crownpoint, and within 2000 feet of the processing plant itself. Exhibit 7 at ¶¶ 4-5. Ms. Smith's home is downwind from HRI's proposed processing plant. Because of Ms. Smith's proximity to the processing plant, where uranium slurry from Section 8 will be processed and shipped for further processing, she will likely be exposed to radioactive air emissions from the site. *Id.*, ¶¶ 8,13. Additionally, Ms. Smith will have to contend with a significant increase in heavy truck traffic near her home, with the attendant noise, dust and exhaust emissions. *Id.*, ¶ 11. Ms. Smith will also be exposed to increased noise from the processing plant itself. *Id.*, ¶ 12. Finally, because Ms. Smith's adult children and grandchildren regularly spend extended periods of time at her residence, they will likewise suffer the same injuries. *Id.*, ¶ 7.

2. Plaintiffs will Suffer Irreparable Procedural Harm.

In addition to the actual harm Plaintiffs will suffer unless an injunction is granted, Plaintiffs will suffer irreparable procedural harm. Procedural harm occurs when a plaintiff is denied the opportunity, due to an agency's failure to follow statutory or regulatory mandates, to fully participate in processes guaranteed by statute or regulation. *See, e.g., Quechan Tribe of the Ft. Yuma Indian Reservation v. U.S. Dept. of the Interior*, 755 F.Supp. 2d 1104, 1120 (S.D. Cal. 2010) (Department of Interior's failure to adequately consult with tribe pursuant to the National Historic Preservation Act caused tribes legally protected procedural right to be "effectively lost."); *Davis v. Mineta*, 302 F.3d at 1114-1115 ("[W]e hold that harm to the environment may be presumed when an agency fails to comply with the required NEPA procedure."); *Wyoming Outdoor Coordinating Council v. Butz*, 484 F.2d 1244, 1250 (10th Cir. 1973).

In this case, the procedural harm to Plaintiffs stems from the Defendants' failure to follow the proper procedures in evaluating HRI's discharge permit application. As described in Section II.A., above, the Defendants improperly accepted HRI's discharge permit application as an application renewal, rather than an application for a new discharge permit. As a result, Plaintiffs are denied the proper notice of HRI's application as mandated by § 20.6.2.3108.B NMAC. More important, however, Defendants' failure to follow the procedure specified by NMED's regulations have denied the Plaintiffs the opportunity to a hearing on HRI's discharge permit application **prior** to HRI being able to conduct discharging activities. As a result, Plaintiffs have effectively lost the hearing and public participation opportunities guaranteed by NMED's regulations and are entitled to an injunction.

C. The Threatened Injury Outweighs Any Damage to the Defendant or the Permit Applicant.

Any alleged harm to the Defendants or the mining company does not outweigh the irreparable harm to Plaintiffs and the environment for two reasons. First, the Defendants' interests would not be harmed by an order enjoining them from accepting HRI's Application as a permit renewal or enjoining them from allowing HRI to conduct discharging activities. As held by the Tenth Circuit, "[t]he self-inflicted nature of [the government's] harm [in violating an environmental statute] ... weighs in favor of granting preliminary injunctive relief". *Davis v. Mineta*, 302 F.3d at 1116. Additionally, administrative burdens on government agencies do not outweigh the threat of irreparable environmental harm. *American Motorcyclist Ass'n v. Watt*, 714 F.2d 962, 966 (9th Cir. 1983) ("harm to Inyo [County]'s planning processes was not comparable to the harm enjoining the Plan would cause to the [environment] and the public interest").

Second, HRI would not be irreparably harmed by an injunction. A delay in construction or mining activities does not weigh against an injunction. *See e.g., Save Our Sonoran, Inc. v. Flowers*, 227 F.Supp.2d 1111, 1115 (D. Ariz. 2002), *aff'd*, 381 F.3d 905, 914 (9th Cir. 2004) (delay in project and possible financial loss did not offset environmental destruction); *Alaska Center for the Environment v. West*, 31 F.Supp.2d 711, 723 (D. Alaska 1998) (noting longer permit processing time was "not of consequence sufficient to outweigh irreversible harm to the environment"); *Seattle Audubon Soc. v. Evans*, 771 F. Supp. 1081, 1096 (W. Dist. Wash., 1991) (unlike permanent environmental harm, "economic effects of an injunction are temporary and can be minimized in many ways").

To the extent delay may result in some financial loss, Federal courts have held that economic harm is not irreparable. *Sampson v. Murray*, 415 U.S. 61, 90 (1974); *National Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 738 (9th Cir. 2001) ("loss of anticipated revenues ... does not outweigh the potential irreparable damage to the environment"). Accordingly, where there is a threat of irreparable environmental harm, "more than pecuniary harm must be demonstrated" to avoid a preliminary injunction.; *Save Our Sonoran, Inc v. Flowers*, 408 F.3d at 1124-1125 (affirming preliminary injunction because, while developer "may suffer financial harm," without injunction, "unlawful disruption to the desert is likely irreparable").

In the mining context, courts have repeatedly enjoined mining operations, despite the claimed economic harms by the mining company even in the situation where the mining has already commenced. *Se. Alaska Conservation Council v. U.S. Army Corps of Eng'rs*, 472 F.3d at 1097. In *South Fork Band Council v. U.S. Dept. of Interior*, the Ninth Circuit noted that, even with billions of dollars in potential lost or delayed revenue that could result from a preliminary injunction against the mine, and even though the company had already spent hundreds of

millions of dollars on initial construction, a preliminary injunction should issue because “the resulting hardship asserted by [the mining company] and the government is cast principally in economic terms of employment loss, but that may for the most part be temporary.” *Id.*, 588 F.3d 718, 728 (9th Cir. 2009).

Here, HRI has not begun any construction or mining operations. Indeed, based on Defendants’ intervention on behalf of HRI, the only harm HRI might suffer is the temporary loss of the ability to attract investors to its project – a harm that in itself is speculative. Moreover, the Plaintiffs seek to preserve the existing rural and agricultural character Church Rock and Crownpoint communities from heavy industrial development. Thus, even if HRI were to suffer some economic loss, the harms to Plaintiffs far outweigh the harm to HRI and an injunction is proper. *See, Wilcox v. Timberon Protective Ass’n*, 111 N.M. at 489; 806 P.2d at 1079 citing *Gaskin v. Harris*, 82 N.M. 336, 481 P.2d 698 (1971).

D. An Injunction is in the Public’s Interest.

The public interest also warrants issuing an injunction enjoining NMED from allowing HRI from conducting any discharging activities until NMED decides to grant its discharge permit application after a public hearing. Courts must consider the public interest when ruling on a request for preliminary injunction. *Nat’l Trust for Historic Preservation v. Albuquerque*, 117 N.M. 590, 595, 874 P.2d 798, 803 (Ct. App. 1994).

While New Mexico courts have not directly addressed the issue, Federal courts have held there is a strong public interest in preserving the status quo with regard to the environment. “Th[e] public interest in preserving the character of the environment is one that the plaintiffs may seek to protect by obtaining equitable relief.” *Wyoming Outdoor Coordinating Council v. Butz*, 484 F.2d at 1250.

In addition to the public interest in maintaining the status quo, there may be a public economic interest in the mine. However, as the Ninth Circuit found, “there is no reason to believe that the delay in construction activities caused by the court's injunction will reduce significantly any future economic benefit that may result from the mine's operation.” *Se. Alaska Conservation Council v. U.S Army Corps of Eng'rs*, 472 F.3d 1097, 1101 (9th Cir. 2006), rev'd on other grounds, 129 S. Ct. 2458 (2009).

In this case, HRI's Section 8 operation is expected to employ a maximum of nine local people. DP-558 Application, Vol. 5, Appendix 4, Section 8 Restoration Action Plan, attached as Exhibit 15. Although the temporary delay in creating these jobs may be considered, the minimal public interest in delaying the start of construction pending this Court's review on the merits is substantially outweighed by the strong public interest in seeing that state agencies comply with the law and that the rights of the public under the Water Quality Act are protected.

E. The Circumstances Favor Waiving the Security for an Injunction.

If a preliminary injunction is granted, Plaintiffs respectfully request that the Court waive the security requirements or impose a nominal security. The decision to waive a bond is squarely within this Court's discretion. NMRCF Rule 1-066(C); *see also, Rhodes v. State ex. rel. Bliss*, 58 N.M. 579, 584, 273 P.2d 852, 855-856 (N.M. 1954) (“the giving of security under Rules 65 and 66 is not mandatory, but to a large extent left to the discretion of the court.”).

While New Mexico case law does not provide guidance as to under what circumstances a security waiver is appropriate, analogous federal case law is instructive. Under Federal Rule of Civil Procedure 65(c), courts have similar discretion to waive the imposition of a security. The Tenth Circuit has held: “Ordinarily, where a party is seeking to vindicate the public interest ... a

minimal bond amount should be considered.” *Davis v. Mineta*, 302 F.3d at 1126 (citation omitted)

In cases where plaintiffs are public interest organizations or individual citizens seeking a preliminary injunction to protect the environment, courts routinely waive the bond requirement or impose a nominal bond. *Id.*; *see also, Friends of the Earth v. Brinegar*, 518 F.2d 322, 323 (9th Cir. 1975).

The purpose of the Water Quality Act is to prevent and abate water pollution. NMSA 1978, § 7-6-13; *see also, Friends of Santa Fe County v. LAC Minerals*, 892 F.Supp. 1333, 1350, n.11 (D.N.M 1995). As with federal environmental laws, requiring a substantial security for citizen enforcement of the Water Quality Act would undermine its purpose and likely would have a chilling effect on litigation to protect the environment and the public interest. *See, e.g., California ex. rel. Van de Kamp v. Tahoe Regional Planning Agency*, 766 F.2d 1319,1325 (9th Cir. 1985) (requiring no bond); *West Virginia Highlands Conservancy v. Island Creek Coal Co.*, 441 F.2d 232, 236 (4th Cir. 1971) (\$100 bond); *Colorado Wild v. U.S. Forest Serv.*, 299 F. Supp. 2d 1184, 1191 (D. Colo. 2004) (no bond); *Sierra Club v. Block*, 614 F. Supp. 488 (D.D.C. 1985) (requiring \$20 bond).

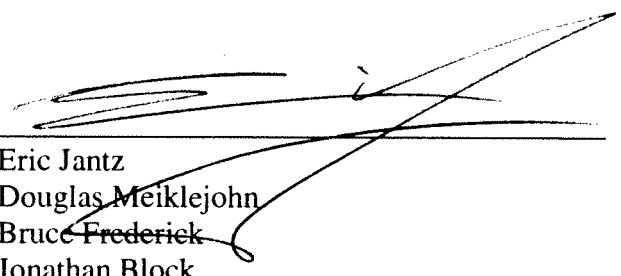
Finally, Federal Rule 65(c), which is analogous to New Mexico Rule 1-066, is based on the theory of unjust enrichment, i.e., a plaintiff should not benefit financially from the wrongful granting of preliminary relief. Where, as here, Plaintiffs gain no pecuniary interest from an injunction, there is no unjust enrichment concern and no bond should be required. *See, Wisconsin Heritages v. Harris*, 476 F. Supp. 300, 302 (E.D. Wisc. 1979) (no bond required where plaintiff “is a nonprofit organization with no apparent financial stake in the outcome of this suit.”).

Finally, the likelihood of success on the merits tips in favor of a minimal bond or no bond. *Davis v. Mineta*, 302 F.3d at 1126.

III. CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court issue a preliminary injunction enjoining the Defendants from accepting HRI's DP-558 discharge permit application as a permit renewal. Further, Plaintiffs request the Court to enjoin Defendants from allowing HRI to conduct any mining operations or mining related activities at Section 8 until it has made a determination to grant or deny HRI's discharge permit application.

Respectfully submitted this 15th day of July, 2011, by:



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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of July, 2011, I have delivered a copy of the foregoing pleading in the above-captioned case via email and U.S. mail, fist class to the following:

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By: 

HRI, INC.
DP-558 SUPPLEMENTAL
MATERIALS
VOLUME 1

Section	Title
-	NMED Discharge Permit Application Parts A, B & C.
B-7	Operational Plan Supplement.
B-10	Water Rights.
C-1	Area Map.
C-3	Topographic Map.

April 1, 2011



Circuit Court of Appeals ruling that upheld the Company's NRC license. The petition was denied by the Supreme Court in November 2010, thereby ending the NRC litigation.

Along a separate State of New Mexico UIC permitting path, on July 2, 1996, HRI submitted an Application to NMED for the Renewal of DP-558. NMED had issued HRI DP-558 on November 2, 1989. On August 16, 1996 the Secretary of the NMED declared that HRI's renewal was timely within the meaning of Section 5101.G of the WQCC Regulations and that HRI was in full compliance with the approved discharge plan (Appendix 6).

On July 14, 1997 United States Environmental Protection Agency (EPA) determined that the Section 8 and Section 17 land's status as Indian country under their regulations was "in dispute" and as such EPA not the State of New Mexico had authority to issue a UIC permit. This action effectively placed the State's renewal of HRI Discharge Plan in limbo. In December 1997, HRI and NMED appealed those determinations to the United States Court of Appeals for the Tenth Circuit. On January 6, 2000, the issue was remanded by the Court back to the EPA. In February 2007, the EPA reached a decision that Section 8 was Indian country, and therefore under its jurisdiction. HRI appealed the decision to the Tenth Circuit Court in April 2009. By a 2-1 decision the court upheld the EPA's ruling. In August 2009, URI's petition for an en banc review was granted and oral arguments were held January 2010. Thirteen years after the EPA's first determination, on June 15, 2010, the United States Court of Appeals for the Tenth Circuit en banc held that the Section 8 ISR property was not Indian Country. The result of the ruling means the authority to issue a UIC permit to HRI falls under the jurisdiction of the State of New Mexico, and not the EPA. On September 13, 2010 time expired for opposing parties to petition the United States Supreme Court to review the June 2010 United States Court of Appeals en banc ruling. No petitions were filed with the U.S. Supreme Court as of the September 13, 2010 deadline ending the litigation.

In step with these court rulings, on July 29, 2010 NMED wrote HRI acknowledging New Mexico jurisdiction over UIC permitting of the Section 8 ISR project and requested documentation that would allow the renewal process to proceed.

1.4 In Situ Mining Technique

In situ recovery (ISR) involves the use of a leaching solution (lixiviant) to extract the mineral of interest from the geologic formation in which it occurs. This is accomplished by injecting the lixiviant through injection wells completed in the zone of interest, dissolving the target minerals, then recovering the pregnant lixiviant, or production fluid by pumping production wells. At HRI's Section 8 ISR site, uranium will be extracted from roll front type deposits which contain an average ore grade of approximately 0.15 percent.

Various well patterns will typically be used for uranium in situ mining at the Section 8 ISR site. Each wellfield area consists of groups of these patterns which will be installed to correspond to the irregular geometry of the ore bodies.

At the Section 8 ISR site, the lixiviant will consist of native groundwater to which gaseous carbon dioxide (or some form of sodium bicarbonate), and oxygen have been added. After the lixiviant is injected into injection wells, and recovered through production wells, it will be piped to the ion exchange facility where the uranium will be removed by circulating the pregnant lixiviant through ion exchange resin. The barren lixiviant will be returned to the wellfield. Ion exchange resin, or yellowcake slurry will be transported in appropriate trailers to the Crownpoint Central

Plant (CCP) where it will be further processed to its final form. If resin is hauled, it will be returned to the IX system for further use after it has been stripped of uranium at the CCP.

Once the economic recovery limit of a mine area is reached, lixiviant injection will be stopped, and the affected ground water will be treated (restored) to return the water to a quality as described in Attachment C-9, Section 5109.

An extensive water monitoring program will be required for in situ mining. Specifically designated wells will be monitored for water level, and sampled for certain water quality parameters on a regular basis to ensure that the injected lixiviant stays within the defined production zone.

The chief components of the Section 8 ISR facility will include:

- a. **Mining process**, where a lixiviant stream will be continuously recirculated from the recovery plant into injection wells, through ore bearing, and a uranium-rich (pregnant) lixiviant will be withdrawn (via production wells) and recirculated to the recovery plant.
- b. The **recovery plant**, where uranium in the pregnant lixiviant will be extracted, and the resulting barren lixiviant will be recirculated through the wellfields.
- c. **Yellowcake precipitation, and concentration** equipment to form oxide (U_3O_8 or yellowcake) which may be shipped either as a wet solid, or slurry (in appropriate trailers).

1.5 Schedule for Mining Related Activities

Within the wellfield, individual wells will be shut down when they cease to be economically productive. When an entire segment of a wellfield has been depleted of uranium, restoration will be started.

The estimated general production and restoration schedule for the Section 8 ISR site is within Appendix 4. It should be emphasized that this schedule is projected, and will ultimately be impacted by regulatory, and market influences.

1.6 Surety Bonding

Before operations begin HRI will provide financial security for mine closure, including surface, and subsurface restoration, and reclamation. The amount of the surety will be determined by the NMED and NRC based on cost estimates for completion of the approved reclamation plan by a third party in the event that HRI defaults. The surety will be reviewed annually by the NMED and NRC, and adjusted to reflect expansions in operations, changes in engineering design, and inflation. The amount of surety will be subject to NMED, and NRC regulatory approval. Details of the surety bonding proposal are within Attachment C-9, Section 5209.

1.7 Information Required by Subsection C, Section 20.6.2.3106 NMAC.

The information that is required under this Subsection is found referenced in the Discharge Permit Supplemental Application and in Table 1 below.

NUREG-1508
BLM NM-010-93-02
BIA EIS-92-001

Final Environmental Impact Statement

to Construct and Operate the
Crownpoint Uranium Solution Mining Project,
Crownpoint, New Mexico

Docket No. 40-8968
Hydro Resources, Inc.

Manuscript Completed: February 1997
Date Published: February 1997

**Division of Waste Management
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001**

in Cooperation With

**Albuquerque District
U.S. Bureau of Land Management
Albuquerque, New Mexico 87107**

**Navajo Area Office
U.S. Bureau of Indian Affairs
Gallup, New Mexico 83701**



The processing plants would be constructed on concrete pads 20 cm (8 in.) thick with curbs 15 cm (6 in.) high. HRI designed the foundation to retain the fluid contents of the largest vessel on the pad. According to that design, the foundation would be constructed with sumps and drains to catch and retain potential spills inside the plant. Thicker footings would be provided where heavy processing equipment and vessels would be located. The curb would be designed to confine and hold potential spills in the plant, so they could be pumped into storage tanks or retention ponds.

2.1.1.4 Uranium Recovery Process

During the solution mining process, HRI would add oxygen to groundwater. Combined with naturally occurring and added bicarbonate ions in the groundwater, this solution, known as lixiviant, would be pumped down injection wells into the mineralized zones where it would dissolve uranium from the sandstone formation (Figure 2.4). The uranium-bearing solution would migrate through the pore spaces found in the sandstone, and would be recovered from production wells. The uranium would then be extracted in the processing plant, and the leaching solution would be recharged and reused.

Uranium solution would be transferred from mining units to ion exchange equipment in the processing plants. The process, schematically illustrated in Figure 2.5, would involve an ion exchange circuit, an elution circuit, and precipitation and drying.

During mining, the well field water would be enriched with uranium and other minerals associated with the ore. Earlier licensing experience indicates that concentrations of trace metals such as arsenic, selenium, vanadium, iron, manganese, and radium may become elevated during the leaching process. Uranium concentration in the pregnant lixiviant from individual production wells could exceed 100 mg/L. The nominal concentration in lixiviant would be 60 mg/L. Once the solution reaches the plant, it would be processed through the three circuits discussed above.

In the ion exchange circuit, the solution would be stored in a surge tank or pumped directly into a series of ion exchange columns. The uranium would be absorbed by ion exchange onto resin beads. The resulting barren solution exiting the ion exchange columns would be recharged with sodium bicarbonate if needed, distributed back to the well fields, and injected with oxygen for further uranium recovery.

As resins in an ion exchange column become saturated with uranium, the column would be taken off-stream for the elution circuit. In the processing plants, resin could either be eluted in its ion exchange column or transferred to an elution tank. During elution, the uranium would be stripped by flushing the resin beads with concentrated brine solution. The resin beads, then virtually free of uranium, would be replaced in an ion exchange column for reuse. The resulting pregnant eluant, which would contain the uranium stripped from the resin beads, would be discharged into a holding tank. The concentration of uranium in the pregnant eluant would be approximately 20,000 mg/L. When a sufficient volume of pregnant eluant is held in storage, the final precipitation and drying circuit would begin.

injected into these wells. Disposal by deep-well injection would require an injection well permit granted by the EPA or other appropriate agencies. Use of a deep injection well would require an NRC license amendment after the injection well permit was granted.

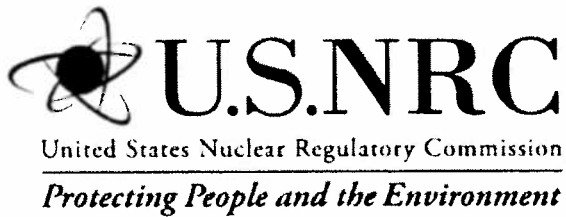
Land application is a disposal technique that uses agricultural irrigation equipment to broadcast wastewater on a relatively large area of land. Land application is currently authorized at several solution mines. Water released in this fashion would require uranium and radium removal as described above. At each site, irrigation would be restricted to the lease areas held by HRI, and would be regulated by irrigation standards or water use standards adopted by the appropriate regulatory authority (State of New Mexico Environmental Department or U.S. EPA), generally using a zero-release NPDES permit. NRC would require HRI to decontaminate areas if radionuclide accumulation exceeds decommissioning standards. HRI's application specifies that on-site land application could occur on 22 ha (54 acres) in the southeastern portion of the Church Rock lease area, and on two tracts of land totaling 35 ha (85 acres) in its Unit 1 and Crownpoint lease areas. Off-site land application for the Church Rock site could occur on 256 ha (640 acres) in Section 16, T16N R16W east of the Church Rock site. Off-site land application for the Crownpoint and Unit 1 sites could occur on 256 ha (640 acres) in Section 12, T17N R13W north of the Crownpoint and Unit 1 sites.

Another disposal method utilized by the solution mining industry is surface discharge, requiring authorization by the EPA or other appropriate agencies. This disposal method has been used only for discharging treated water, but has been considered by licensees for other waste streams. Generally, radionuclides in wastewater authorized for this method of disposal are subject to release limits found in NRC regulations. Surface discharge is most likely to be used as a disposal method at the Church Rock site (HRI 1996a). Should surface discharge be implemented, HRI would have to obtain the appropriate State and Federal permits.

2.1.3 Restoration, Reclamation, and Decommissioning

Following uranium recovery in each mine unit, HRI would be required by NRC license to restore groundwater quality. At the conclusion of the project, all contaminated materials, soil, and structures would be removed from the sites. The facilities would then be decommissioned, and the well field and processing plant sites would be reclaimed. The following sections provide details regarding standards which would be met, and the procedures used to meet them.

Detailed restoration, reclamation, and decommissioning plans, related cost estimates, and an appropriate surety would be required by the NRC before HRI could begin uranium recovery operations. NRC regulations require that the licensee maintain an adequate financial surety in the form of surety bonds, cash, certificates of deposit, deposits of government securities, or irrevocable letters of credit to cover the costs for decommissioning, reclamation of the disturbed areas, waste disposal, and groundwater restoration. The amount of the surety is based on cost estimates for completing the approved reclamation plan by a third party in the event the licensee defaults. The surety is reviewed annually by NRC and adjusted to reflect expansions in operations, changes in engineering design, and inflation.



NUREG-1910
Supplement 1

Environmental Impact Statement for the Moore Ranch ISR Project in Campbell County, Wyoming

Supplement to the
Generic Environmental
Impact Statement for
In-Situ Leach Uranium
Milling Facilities

Final Report



U.S. Nuclear Regulatory Commission
Office of Federal and State Materials and
Environmental Management Programs

Response: For any given groundwater constituent, licensees and applicants are subject to the three groundwater quality standards listed in 10 CFR Part 40, Appendix A, Criterion 5B(5) – background, MCL, or ACL. Specifically, under Criterion 5B(5), the concentration of a hazardous constituent must not exceed (a) the NRC-approved background concentration of that constituent in groundwater; (b) the respective MCL value in the table in paragraph 5C if the constituent is listed in the table and if the background level of the constituent is below the value listed or; (c) an ACL established by the NRC. Under Criterion 5B(6), requests for ACLs would only be considered after a applicant has demonstrated that restoring the constituent at issue to background or MCL values is not practically achievable at a specific site. Only ACLs that present no significant hazard may be proposed by applicants for NRC consideration. The NRC may establish a site specific ACL for a hazardous constituent if it finds that the proposed limit is as low as reasonably achievable, after considering practicable corrective actions, and that the constituent would not pose a substantial present or potential hazard to human health or the environment as long as the ACL is not exceeded. A discussion of the additional Criterion 5B(6) requirements for ACLs is presented in Appendix C of the final SEIS.

Comments: MR010-005; MR011-005; MR017-021; MR017-023; MR012-042; MR012-043
A commenter noted that NRC has not been able to accomplish restoration of groundwater to baseline values for all groundwater constituents in any ISL wellfield to date. Another commenter stated that NRC had mischaracterized the ISR mining's groundwater restoration efficacy history and unreasonably minimized the impacts from groundwater restoration. A commenter stated that restoration has only been accomplished by lowering the standards. Another commenter similarly stated that restoration to either background levels or MCL standards has been aspirational rather than a reality, and that regulators—whether NRC or Agreement States—have allowed ACLs to be established for some constituents. The commenter asserted that restoration standards have been a moving target for all ISR mining sites and that NRC has made it nearly impossible for a reader to analyze environmental impacts because of the lack of a detailed and comprehensive history of ISR restoration operations.

Response: The commenters are correct that, to date, restoration to backgroundwater quality for all constituents has proven to be not practically achievable at licensed NRC ISR sites (NRC, 2005; NRC, 2004; NRC, 2003). In the past, NRC has applied “class of use,” a state designation under the SDWA, as a secondary restoration goal to approve these restorations. The “class of use” standard for restored groundwater quality was based on restoration standards provided in NUREG–1569. The “class of use” standard was neither treated nor approved as an ACL. The NRC has since determined that the primary and secondary restoration standards in NUREG–1569 are inconsistent with the restoration standards in 10 CFR Part 40, Appendix A, Criterion 5B(5). The NRC notified licensees and applicants in Regulatory Information Summary, RIS 09-05, dated April 29, 2009, that the restoration standards listed in NUREG–1569, Section 6.1.3(4) are not consistent with those listed in 10 CFR Part 40, Appendix A, applicant must commit to achieve the restoration standards in Criterion 5B(5).

For all licensees, NRC would require an ACL for any constituents that do not meet the primary baseline standards. NRC would perform an SER and environmental review when a licensee applies for a license amendment to establish ACLs for a particular constituent after it demonstrates it is not practically achievable to restore the wellfield to either background or MCL levels.

IN THE DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

EASTERN NAVAJO DINÉ AGAINST URANIUM MINING,
its individual members, LARRY J. KING, and CHRISTINE SMITH

Plaintiffs,

v.

No.

DAVID MARTIN
SECRETARY OF THE ENVIRONMENT, RAJ SOLOMON
DEPUTY SECRETARY OF THE ENVIRONMENT and
the NEW MEXICO ENVIRONMENT DEPARTMENT

Defendants.

AFFIDAVIT OF LARRY J. KING

I, Larry J. King, based upon my personal knowledge and belief, state:

1. I reside at Section 17, Township 16 N, Range 16 W, on a homesite lease granted by the Navajo Nation.
2. I am of sound mind and body and competent to make this Affidavit.
3. I have been a member of Eastern Navajo Diné Against Uranium Mining (“ENDAUM”) since 1997. I am currently an ENDAUM member and member of ENDAUM’s Board of Directors.
4. My family has lived on Section 17 for two generations. My father built the house that I live in.
5. I grew up on and adjacent to Section 17 and have lived here most of my life.
6. I use and enjoy the land at Section 17. I also use and enjoy the lands adjacent to and nearby the proposed project land.



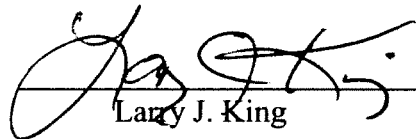
7. I graze livestock on Section 17 and on nearby land.
8. I regularly gather medicinal and ceremonial plants on Section 17 and near Section 8.
9. I have in the past, and plan on doing so in the future, participated in cultural and religious ceremonies near and adjacent to Section 8.
10. Section 8 is visible from my house.
11. My recreation, aesthetic, spiritual, conservation and other interests will be significantly and adversely affected if Hydro Resources, Inc.'s proposed uranium mining activities are allowed to proceed. These uses and interests will be immediately and irreparably harmed if Hydro Resources, Inc. commences its proposed activities.
12. The excavation of the wells and liquid waste lagoons, clearing of vegetation, construction of roads, and movement of heavy industrial machinery during the construction of the proposed project will degrade the environment and irreparably alter my use and enjoyment of the area as described above.
13. Radon venting from the well field and placement of radioactive liquid waste at the proposed operations site poses a risk to the health of nearby wildlife, livestock, and humans. This risk severely and irreparably impacts my use and enjoyment of the area.
14. Recent radiation surveys have detected levels of radiation on my land and along New Mexico highway 566 in excess of regulatory levels caused by soil contaminated by uranium mine waste from past uranium mining operations.
15. Increased industrial traffic will further disturb the contaminated soil along highway 566, posing an increased risk to the health of nearby residents, wildlife, and livestock.

16. My uses are totally incompatible with Hydro Resources, Inc.'s proposed uses, including vegetation clearing, road building, and construction.

17. The only way to protect my interest and uses of lands and waters affected by the Section 8 project, and to protect the similar interests and uses of ENDAUM members, from irreparable injury is to issue an injunction prohibiting the New Mexico Environment Department from permitting Hydro Resources, Inc. to conduct any activities at the proposed project site until it has decided to grant HRI's discharge permit application.


AFFIRMATION

I declare under penalty of perjury that the foregoing is true and accurate to the best of my personal knowledge, information, and belief.


Larry J. King

Sworn and subscribed before me in McKinley County, the undersigned, a Notary Public in and for the State of New Mexico, on this 07 day of July, 2011.

My Commission expires on Dec 09 2014.


Notary Public

Alternatives Including the Proposed Action

Pregnant eluant would be acidified using hydrochloric acid (HCl) to destroy the uranyl carbonate complex. Hydrogen peroxide would then be added to the solution to precipitate the uranium. The precipitated uranyl peroxide (UO₄ or yellowcake) slurry might require pH adjustment, and then would be allowed to settle. The now-barren eluant would be recycled, and the yellowcake slurry would be transported by truck to the Crownpoint facility. At the Crownpoint facility, yellowcake would be further dewatered and washed using a filter press and then dried. Water left over from dewatering and drying would either be reused in the elution circuit or directed to a wastewater retention pond. HRI's proposed operations would result in a maximum yearly production rate of 3 million lb of yellowcake.

At the satellite ion exchange plants, the resins would be eluted and the uranium precipitated and filtered. The resulting yellowcake slurry would be transported by truck to the main Crownpoint facility for drying (Figure 2.6). HRI's proposal indicates yellowcake would be transported to the Crownpoint processing plant in sole-use semitrailer tankers designed and placarded for this purpose, in accordance with U.S. Department of Transportation requirements.

2.1.1.5 Waste Retention Ponds

The purpose of retention ponds is to store wastewater until treatment, promote evaporative loss of water which cannot be discharged to the environment, and maintain control of source and 11e(2) by-product material found in the liquid effluents from solution mining. HRI proposes to use three waste retention ponds at each processing site. These ponds, which would occupy approximately 2.5 ha (6 acres) each, would be constructed below ground level to maintain all processing solutions below grade. HRI commits to designing and constructing its pond embankments to meet specifications in NRC Regulatory Guide 3.11, *Design, Construction, and Inspection of Embankment Retention Systems for Uranium Mills* (NRC 1977a), in the event that pond operating levels above grade are required. HRI would be required by license condition to perform and document inspections of the pond embankments, fences, and liners, as well as measurements of pond freeboard and checks of the leak detection system.

The ponds would have double synthetic liners and an intervening layer up to 18 cm (6 in.) thick containing sand and perforated piping forming an underdrain leak detection system. An acceptable design alternative would eliminate the intervening sand blanket, replacing it with synthetic grid material.

If increased waste storage and evaporation pond capacity becomes necessary, HRI would be required either to provide additional pond area, or to construct the ponds with above-grade embankments and storage levels. Therefore, HRI would be required by license condition to maintain fluid levels below grade, or to construct its ponds in accordance with NRC Regulatory Guide 3.11, *Design, Construction, and Inspection of Embankment Retention Systems for Uranium Mills* (NRC 1977a), or other acceptable design criteria.



IN THE DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

EASTERN NAVAJO DINÉ AGAINST URANIUM MINING,
its individual members, LARRY J. KING, and CHRISTINE SMITH

Plaintiffs,

v.

No.

DAVID MARTIN
SECRETARY OF THE ENVIRONMENT, RAJ SOLOMON
DEPUTY SECRETARY OF THE ENVIRONMENT and
the NEW MEXICO ENVIRONMENT DEPARTMENT

Defendants.

AFFIDAVIT OF CHRISTINE SMITH

I, Christine Smith, based upon my personal knowledge and belief, state:

1. I reside less than a mile west of Crownpoint Traders on Crownpoint Drive in Crownpoint, New Mexico.
2. I am of sound mind and body and competent to make this Affidavit.
3. I have been a member of Eastern Navajo Diné Against Uranium Mining (“ENDAUM”) since summer of 1998. I am currently an ENDAUM member and member of ENDAUM’s Board of Directors.
4. My residence is located within 250 feet of the fence surrounding Hydro Resources, Inc.’s central uranium processing plant in Crownpoint, New Mexico.
5. My residence is located within 2000 feet of the processing plant itself.
6. I live in my home with my youngest child.



7. My older children and grandchildren regularly visit my home and stay for extended periods of time.

8. The prevailing winds in Crownpoint blow towards my house from the central processing plant.

9. My recreation, aesthetic, spiritual, conservation and other interests will be significantly and adversely affected if Hydro Resources, Inc.'s proposed uranium mining and processing activities are allowed to proceed. These uses and interests will be immediately and irreparably harmed if Hydro Resources, Inc. commences its proposed activities.

10. Uranium ore from Section 8 will be processed in the central processing plant behind my house.

11. Operation of the central processing plant will cause industrial truck traffic directly adjacent to my home, increasing dust, truck exhaust, and noise.

12. The movement of heavy industrial machinery during the operation of the proposed project will degrade the environment and irreparably alter my use and enjoyment of the area as described above.

13. Radioactive air emissions from the central processing plant pose a risk to the health of nearby wildlife, livestock, and humans. This risk severely and irreparably impacts my use and enjoyment of the area.

14. My uses are totally incompatible with Hydro Resources Inc.'s proposed uses.

15. The only way to protect my interest and uses of lands affected by the Section 8 project, and to protect the similar interests and uses of ENDAUM members, from irreparable injury is to issue an injunction prohibiting the New Mexico Environment Department from

permitting Hydro Resources, Inc. to conduct any activities at the proposed project site until it has decided to grant HRI's discharge permit application.

AFFIRMATION

I declare under penalty of perjury that the foregoing is true and accurate to the best of my personal knowledge, information, and belief.

Christie Smith
Christine Smith

Sworn and subscribed before me, in the County of McKinley, the undersigned, a Notary Public in and for the State of New Mexico, on this 12th day of July, 2011.
My Commission expires on 06-03-15.



Marie A. Bennett
Notary Public



SUSANA MARTINEZ
GOVERNOR

JOHN A. SANCHEZ
LIEUTENANT GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT
Ground Water Quality Bureau
Harold Runnels Building
1190 St. Francis Drive, P.O. Box 5469
Santa Fe, New Mexico 87502-5469
Telephone (505) 827-2855
www.nmenv.state.nm.us



DAVE MARTIN
SECRETARY

RAJ SOLOMON, P.E.
DEPUTY SECRETARY

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

March 23, 2011

Mr. Mark S. Pelizza, Senior Vice President for Health, Safety, Environment, and Public Affairs
Hydro Resources, Inc.
405 State Highway 121 Bypass
Building A, Suite 110
Lewisville, TX 75067

RE: Response to your letter dated March 2, 2010 (*sic*) regarding status of DP-558

Dear Mr. Pelizza:

Your above-referenced letter requests clarification of the current status of DP-558 with regard to the New Mexico Environment Department's ("NMED") letter to you dated July 29, 2010. Specifically, your letter requests a statement that Hydro Resources, Inc. ("HRI") submitted a timely renewal application as was previously concluded in an August 16, 1996 letter from NMED.

NMED records indicate that DP-558 was last issued in 1989 and that HRI submitted a renewal application for DP-558 on July 1, 1996. NMED has determined that the renewal application was timely within the meaning of 20.6.2.3106.F NMAC because the application was submitted within 120 days prior to the date of expiration and HRI was not in violation of DP-558 on the date of expiration. This conclusion remains unchanged from NMED's August 16, 1996 letter.

Further work on DP-558 renewal will await NMED's receipt of HRI's updated renewal application and supporting material as has been discussed during previous meetings with NMED personnel. HRI must receive a renewal of DP-558 from NMED before mining can commence.

Please do not hesitate to contact me at (505) 827-2919 or Mary Ann Menetrey, Manager of the Mining Environmental Compliance Section at (505) 827-2944 if you should have any questions.

Sincerely,

cc. William C. Olson
Chief, Ground Water Quality Bureau

Copies:

- David Martin, NMED Secretary
- Raj Solomon, NMED Deputy Secretary
- David L. Mayerson, Permit Lead
- Mary Ann Menetrey, MECS Manager

WCO/dlm



Olson, Bill, NMENV

From: Bob Gallagher [bobgallagher93@yahoo.com]
Sent: Wednesday, April 06, 2011 12:59 PM
To: Olson, Bill, NMENV
Cc: Mark Pelizza
Subject: Letter Dated March 25, 2011

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Bill,

We are in receipt of your letter dated March 23, 2011 regarding the status of DP-558. In the last sentence in the next to the last paragraph you state, "**HRI must receive a renewal of DP-558 from NMED before mining can commence.**" As we talked about on the phone, it is the position of URI that this sentence is in direct contradiction with NMED Regulation 20.6.2.3106 F. This section clearly states that our permit "**shall not expire until the application for renewal has been approved or disapproved. A discharge permit continued under this provision remains fully effective and enforceable.**"

On behalf of my client URI, we respectfully request a clarification from NMED in reference to above mentioned sentence. It is our desire to see the sentence eliminated, which would be in compliance with the existing regulations, or to receive a complete clarification of NMED position concerning this subject matter.

To that extent, Mark Pelizza will be in the state next week and Mark and myself would look forward to sitting down with you and further discussing the subject matter. If you are available Tuesday March 12th, we would be delighted to come to Santa Fe to visit with you, or we could make other arrangements too fit your schedule.

Thanks.





NEW MEXICO
ENVIRONMENT DEPARTMENT



Ground Water Quality Bureau

SUSANA MARTINEZ
Governor

JOHN A. SANCHEZ
Lieutenant Governor

Harold Runnels Building
1190 St. Francis Drive
P.O. Box 5469, Santa Fe, NM 87502-5469
Phone (505) 827-2918 Fax (505) 827-2965
www.nmenv.state.nm.us

DAVE MARTIN
Secretary
RAJ SOLOMON, P.E.
Deputy Secretary

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

~~March 23, 2011~~

(Revised and reissued May 27, 2011)

Mr. Mark S. Pelizza, Senior Vice President for Health, Safety, Environment, and Public Affairs
Hydro Resources, Inc.
405 State Highway 121 Bypass
Building A, Suite 110
Lewisville, TX 75067

RE: Response to your letter dated March 2, 2010 (*sic*) regarding status of DP-558

Dear Mr. Pelizza:

Your above-referenced letter requests clarification of the current status of DP-558 with regard to the New Mexico Environment Department's ("NMED") letter to you dated July 29, 2010. Specifically, your letter requests a statement that Hydro Resources, Inc. ("HRI") submitted a timely renewal application as was previously concluded in an August 16, 1996 letter from NMED.

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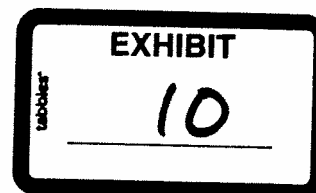
NMED is in receipt of HRI's updated renewal application and is currently conducting technical review of the application.

Please do not hesitate to contact me at (505) 827-2919 or Mary Ann Menetrey, Manager of the Mining Environmental Compliance Section at (505) 827-2944 if you should have any questions.

Sincerely,

William C. Olson
Chief, Ground Water Quality Bureau

Copies: David Martin, NMED Secretary
Raj Solomon, NMED Deputy Secretary
David L. Mayerson, Permit Lead
Mary Ann Menetrey, MECS Manager



Olson, Bill, NMENV

From: Schuman, George, NMENV
Sent: Wednesday, June 01, 2011 3:59 PM
To: Olson, Bill, NMENV
Subject: Revision and reissuance of HRI letter

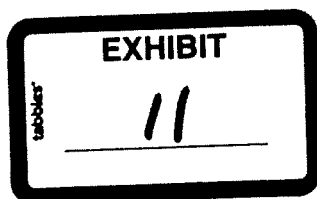
Bill:

As you requested, following is a summary of actions regarding the reissuance of a March 23, 2011 letter to Hydro Resources:

On the morning of Thursday May 26, I received a voice mail message and a subsequent phone call from Anna Serrano (Secretary's Office) informing me that Deputy Secretary Raj Solomon requested to meet with me. I met with the Deputy Secretary that morning in his temporary office space on the third floor of the Runnels Building. We discussed a March 23, 2011 letter from the GWQB to Hydro Resources regarding DP-558. We discussed language in the letter stating that Hydro Resources must receive a renewal of the Discharge Permit before mining could commence under DP-558. The Deputy Secretary also inquired about letter language indicating that Hydro Resources had submitted a timely application for renewal of DP-558 and was not in violation of the permit on the date of expiration, as the statement regarding the need to obtain a renewal permit prior to commencement of mining seemed to conflict with the language of 20.6.2.3106.F which allows for the continuation of permits under such circumstances.

The Deputy Secretary indicated that the sentence pertaining to the need to obtain a renewal permit for DP-558 prior to commencement of mining was hindering Hydro Resource's ability to obtain financing for their mine development project and directed me to reissue the March 23 letter absent the problematic sentence, or to propose alternative language to the problematic sentence. Upon discussion with Mary Ann Menetrey and David Mayerson, I removed the problematic sentence and added language stating that NMED was in receipt of Hydro Resource's updated renewal application and was currently conducting technical review of the updated application. I forwarded the revised letter to the Deputy Secretary during the afternoon of May 26 via email and received an email response directing me to issue the letter. I signed the letter on behalf of Bill Olson and issued the revised letter on May 27.

George



Olson, Bill, NMENV

From: Schuman, George, NMENV
Sent: Wednesday, June 01, 2011 4 01 PM
To: Olson, Bill, NMENV
Subject: FW: Revised HRI letter

From: Solomon, Raj, NMENV
Sent: Thursday, May 26, 2011 5:42 PM
To: Schuman, George, NMENV
Subject: RE: Revised HRI letter

The letter looks good. Please sign and email me a pdf version of the signed copy.

Raj Solomon, P.E.
Deputy Cabinet Secretary
New Mexico Environment Department
1190 St. Francis Dr.
Santa Fe, NM 87502
Phone: (505) 827-2855
Fax: (505) 827-2836

From: Schuman, George, NMENV
Sent: Thursday, May 26, 2011 4:08 PM
To: Solomon, Raj, NMENV
Subject: Revised HRI letter

Raj,

Here is the revised letter. I need to catch the 4:15 train, but will be back at 6:30 tomorrow morning.

George





SUSANA MARTINEZ
GOVERNOR

JOHN A. SANCHEZ
LIEUTENANT GOVERNOR


State of New Mexico
ENVIRONMENT DEPARTMENT
Office of the Secretary
Harold Runnels Building
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Telephone (505) 827-2855
www.nmenv.state.nm.us



DAVE MARTIN
SECRETARY

RAJ SOLOMON, P.E.
DEPUTY SECRETARY

MEMORANDUM

TO: Hydro Resources Inc. (HRI) Discharge Permit File DP-558
FROM: William C. Olson, Bureau Chief, Ground Water Quality Bureau (GWQB) 
DATE: June 2, 2011
SUBJECT: NMED MAY 27, 2011 LETTER TO HRI

This memorandum is intended to clarify correspondence in the permitting record for the HRI discharge permit DP-558 file.

On May 27, 2011, while I was on vacation, a revised and reissued letter was sent to HRI under my signature and signed on my behalf without my knowledge, review or approval. This letter revised and removed language in a New Mexico Environment Department (NMED) March 23, 2011 letter, authored by myself in my capacity as the Bureau Chief of the GWQB, to HRI regarding the timely renewal status of HRI's discharge permit for DP-558.

I was involved in the preparation, review and approval of the original March 23, 2011 letter and authorized the March 23, 2011 letter to be signed on my behalf. However, I did not authorize, review or approve of the revised and reissued NMED letter of May 27, 2011, nor did I authorize a letter to be signed on my behalf revising the language of my March 23, 2011 letter. For the record of HRI discharge permit DP-558, the May 27, 2011 NMED letter to HRI was issued without the knowledge of the GWQB Bureau Chief and is not an action of the GWQB Bureau Chief.



Mayerson, David, NMENV

From: Schoeppner, Jerry, NMENV
Sent: Monday, March 14, 2011 09:57
To: Mayerson, David, NMENV
Subject: FW: Federal Appeals Court Gives Go Ahead to Uranium Mining in Churchrock

Categories: cleared

FYI

Jerry

From: Schoeppner, Jerry, NMENV
Sent: Monday, June 28, 2010 8:20 AM
To: Olson, Bill, NMENV
Cc: Leavitt, Marcy, NMENV; Cottrell, Sarah, NMENV; Menetrey, Mary Ann, NMENV; Hughes, Tracy, NMENV; Bardino, Marissa, NMENV
Subject: RE: Federal Appeals Court Gives Go Ahead to Uranium Mining in Churchrock

DP-558 was apparently renewed in June, 1998. According to the renewal notification letter NMED sent HRI on September 27, 2002, DP-558 was renewed on June 1, 1998. However, the actual renewal letter and DP is not in the file.

Jerry

From: Olson, Bill, NMENV
Sent: Friday, June 25, 2010 8:54 AM
To: Schoeppner, Jerry, NMENV
Cc: Leavitt, Marcy, NMENV; Cottrell, Sarah, NMENV; Menetrey, Mary Ann, NMENV; Hughes, Tracy, NMENV; Bardino, Marissa, NMENV
Subject: RE: Federal Appeals Court Gives Go Ahead to Uranium Mining in Churchrock

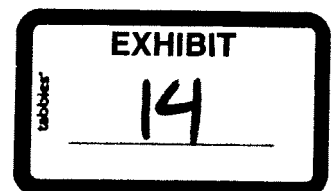
Was the DP actually renewed in 1996? Is that the basis for saying it would expire in 2002?

Bill Olson
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Ground Water Quality Bureau
NM Environment Department
P.O. Box 5469
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(505) 827-2919

From: Bardino, Marissa, NMENV
Sent: Thursday, June 24, 2010 2:47 PM
To: Schoeppner, Jerry, NMENV; Olson, Bill, NMENV
Cc: Leavitt, Marcy, NMENV; Cottrell, Sarah, NMENV; Menetrey, Mary Ann, NMENV; Hughes, Tracy, NMENV
Subject: RE: Federal Appeals Court Gives Go Ahead to Uranium Mining in Churchrock

Thanks so much Jerry. I also talked to Mary Ann.

From: Schoeppner, Jerry, NMENV
Sent: Thursday, June 24, 2010 12:01 PM
To: Olson, Bill, NMENV; Bardino, Marissa, NMENV
Cc: Leavitt, Marcy, NMENV; Cottrell, Sarah, NMENV; Menetrey, Mary Ann, NMENV



Subject: RE: Federal Appeals Court Gives Go Ahead to Uranium Mining in Churchrock

I've reviewed the file and this is what I found related to HRI's request for renewal of DP-558.

11/02/89	DP-558 issued, expiration date of 11/2/1996
09/28/92	HRI requests modification to add Section 17 to permit
10/07/94	Secretary signs Decision and Order approving modification, expiration date 11/2/1996
04/01/96	Letter from EID to HRI, notice that DP-558 will expire soon
07/01/96	HRI submits renewal and requests confirmation that it is timely
08/01/96	NMED letter to HRI, renewal was timely
09/27/02	Letter from EID to HRI, notice that DP-558 will expire soon

According to the file, HRI did not respond to the 9/27/02 notice apparently due to litigation, but it is unclear if the 9/27/02 letter was valid during on-going litigation. If the notice is valid, then it appears that the permit has expired.

Jerry

From: Olson, Bill, NMENV
Sent: Thursday, June 24, 2010 11:11 AM
To: Bardino, Marissa, NMENV
Cc: Leavitt, Marcy, NMENV; Cottrell, Sarah, NMENV; Schoeppner, Jerry, NMENV; Menetrey, Mary Ann, NMENV
Subject: RE: Federal Appeals Court Gives Go Ahead to Uranium Mining in Churchrock

I don't know the full permit status. Technically the permit may be a valid existing permit if a renewal was filed 120 days in advance of the permit expiration. If not renewed, the permit expires and a new application is needed. However, the facility was never built so a renewal permit will include changes based upon our current knowledge of these types of operations. Mary Ann or Jerry will know more.

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From: Bardino, Marissa, NMENV
Sent: Thursday, June 24, 2010 10:55 AM
To: Olson, Bill, NMENV
Cc: Leavitt, Marcy, NMENV; Cottrell, Sarah, NMENV; Schoeppner, Jerry, NMENV; Menetrey, Mary Ann, NMENV
Subject: RE: Federal Appeals Court Gives Go Ahead to Uranium Mining in Churchrock

Thanks Bill. So can you tell me if the past renewal is not valid anymore and if it needs to be updated with a new application. That is basically what I need. Thanks.

From: Olson, Bill, NMENV
Sent: Thursday, June 24, 2010 10:52 AM
To: Bardino, Marissa, NMENV
Cc: Leavitt, Marcy, NMENV; Cottrell, Sarah, NMENV; Schoeppner, Jerry, NMENV; Menetrey, Mary Ann, NMENV
Subject: RE: Federal Appeals Court Gives Go Ahead to Uranium Mining in Churchrock

You can drop Dana and David from this topic as it is a discharge permitting issue under GWQB's Mining Environmental Compliance Section.

It is my understanding from Mary Ann that we have a DP renewal application on this from the past that was not acted on because of the litigation and that we have issues we need to address in any permit renewal. I don't recommend saying much specific about issues what we need to look at during DP renewal at this time except for generalities.

Mary Ann/Jerry – Can you please get with Marissa on more background.

